Before the
Federal Communications Commission

In the Matter of	)	
	)	
Rural Health Care Support Mechanism	)	WC Docket No. 02-60
	)	
Funding Pilot Program Participants Transitioning out of the Rural Health Care Pilot Program in Funding Year 2012	)	

Comments of the Montana Telecommunications Association

I. Introduction

The Montana Telecommunications Association ("MTA") represents rural eligible telecommunications carriers ("ETCs") serving nearly 90 percent of Montana's wireline market, including residential consumers, small businesses and anchor institutions such as rural health care providers. MTA's members include small and large telecom providers, both member-owned telephone cooperatives and shareholder-owned commercial companies. Collectively, these companies have deployed over 20,000 miles of fiber facilities throughout the state and offer a full spectrum of voice and broadband services, ranging from DSL to Ethernet.

MTA is pleased to respond to the Wireline Competition Bureau's ("Bureau") Public Notice ("PN") seeking comments regarding continued funding of Rural Health Care Pilot Program ("Pilot Program") projects "on an interim basis, during the 2012 funding year to provide time to establish a process to transition them to the permanent Rural Health Care support mechanism…"[1]

The Bureau's PN raises a number of concerns about the Pilot Program

[1] "Wireline Competition Bureau Seeks Comment on Funding Pilot Program Participants Transitioning out of the Rural health Care Pilot Program in Funding Year 2012." Public Notice. WC Docket No. 02-60; DA 12-273. Release Date: February 27, 2012.

that have been the subject of prior comments filed by MTA and other parties.[2] In short, the PN puts the cart before the horse. It assumes that pilot projects that will run out of funds in 2012 should continue to be funded despite the temporary nature of the Pilot Program, questions raised about the Rural Health Care Program by the U.S. Government Accountability Office ("GAO"), and still-unresolved questions about contour of the Rural Health Care support mechanism itself as discussed in the 2010 Rural Health Care Program Notice of Public Rulemaking ("NPRM").[3]

II. Discussion

MTA can find no reference in either the *2006 Pilot Program Order* or the *2007 Pilot Program Selection Order* that indicates that the Pilot Program was supposed to transition into a continuously-funded permanent program. In fact, the opposite is the case. The Pilot Program was intended to be a two-year "trial program" (subsequently extended to three years) to develop a better understanding of how the Rural Health Care mechanism might "more effectively…bring the benefits of broadband connectivity to health care providers and patients in those areas of the country most in need." Upon completion of the Pilot Program, the Commission stated that it would issue a "report detailing the results of the program and the status of the health care mechanism generally, and recommend any changes…"[4]

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[2] See for example: *In the Matter of Rural Health Care Support Mechanism*. Health Information Exchange of Montana Request for Additional Funding under the Rural Health Care Pilot Program. WC Docket No. 02-60. Comments of the Montana Telecommunications Association. February 18, 2011. *In the Matter of Rural Health Care Support Mechanism*, Notice of Proposed Rulemaking. WC Docket No. 02-60. Comments of the Montana Telecommunications Association. September 10, 2010. *In the Matter of Health Care Delivery Elements of the National Broadband Plan*. Rural Health Care Support Mechanism. Docket Nos. GN 09-51 and WC 02-60. Comments of the Montana Telecommunications Association. January 11, 2010.

[3] *In the Matter of Rural Health Care Support Mechanism*, Notice of Proposed Rulemaking. WC Docket No. 02-60, FCC 10-125. Rel. July 15, 2010.

[4] *In the Matter of Rural Health Care Support Mechanism*. WC Docket 02-60; FCC 06-144. Released September 29, 2006. ("Pilot Program Order"). ¶9. "Before taking further action to revise or expand the current RHC program, however, we believe it is prudent to engage in a **trial program** that will provide us with a more complete and

MTA is unaware of any report detailing the results of the program as indicated in the *Pilot Program Order*; however, the Federal Communications Commission ("Commission") did issue the aforementioned 2010 NPRM seeking comments on a variety of proposals to revise the Rural Health Care support mechanism. Thus, the NPRM arguably may satisfy, at least in part, the *Pilot Program Order's* provision for a report and recommended changes.

In response to the NPRM, MTA discussed a variety of lessons learned from the Pilot Program.[5] Among such lessons learned, MTA noted—as did the American Telemedicine Association ("ATA")—that funding infrastructure construction through the Rural Health Care Program is "ill-advised" from both a legal and public policy standpoint. Citing ATA, MTA pointed out that the Pilot Program's policy of funding infrastructure construction puts rural health care providers in the business of telecommunications construction, which is not the expertise of health care providers and places them in competition with commercial providers of broadband services. Moreover, funding infrastructure construction through the Rural Health Care support mechanism "encourages the use of federal funds to purposely overbuild broadband networks. A provision allowing reselling of excess capacity to non-healthcare customers, at best, thwarts Congressional intent in ways that are probably not legally allowed by any other federal program."[6]

Further, the Commission noted in the 2010 NPRM that it established the Pilot Program "to examine ways to stimulate deployment of broadband infrastructure necessary to support telehealth and telemedicine…"[7] To receive funding, pilot projects needed to have met a number of conditions, including a

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practical understanding of how to ensure the best use of these available funds. Results from such a pilot program will inform our examination of how we can more effectively use available funding to bring the benefits of broadband connectivity to health care providers and patients in those areas of the country most in need. Upon completion of the pilot program, we will issue a report detailing the results of the program and the status of the health care mechanism generally, and recommend any changes that are needed to improve the programs." (Emphasis added.)

[5] *Op cit*. Comments of the Montana Telecommunications Association. September 10, 2010.

[6] *Id*. p.5.

[7] *Op cit*. (NPRM, ¶6.)

requirement "to provide assurances that their proposed networks will be self-sustaining once established."[8] (Emphasis added.)

And in November 2010, the U.S. General Accountability Office ("GAO") found that the Rural Health Care Program's lack of adequate performance measurements could jeopardize the Program. GAO recommended that the Commission "assess rural health care providers' needs, consult with knowledgeable stakeholders, develop performance goals and measures, and develop and execute sound performance evaluation plans…before implementing any new programs or starting any new data collection efforts."[9] Following the GAO Report, Bureau Chief Sharon Gillett directed the Universal Service Administrative Company ("USAC") to "develop an evaluation plan for the Rural Health Care Pilot Program [including] well-defined, clear, and measurable objectives [and] criteria or standards for determining program performance" as recommended by the GAO."[10] MTA is aware of a March 14, 2012, letter from Craig Davis, USAC Vice President of the Rural Health Care Division, to Sharon Gillett, Wireline Competition Bureau Chief, containing "USAC Observations on the FCC Rural Health Care Pilot Program."[11] However, this letter fails to respond either to GAO's findings or to Ms. Gillett's February, 2011, directives to USAC to develop well-defined, clear and measurable objectives, criteria and standards for determining Rural Health Care Program performance.

In short, the Commission has not resolved any of the issues raised in the *2006 Pilot Program Order*, the *2007 Pilot Program Selection Order*, the 2010 NPRM, or the 2010 GAO Report. Neither the *2006 Order* nor the *2007 Order* indicates that the Pilot Program was intended to be a springboard to permanent

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[8] *Id*.

[9] U.S. Government Accountability Office. "FCC's Performance Management Weaknesses Could Jeopardize Proposed Reforms of the Rural Health Care Program. GAO-11-27. November 17, 2010. http://www.gao.gov/products/GAO-11-27. Summary.

[10] Letter from Sharon Gillett, Chief, Wireline Competition Bureau, to Scott Barash, Acting CEO, USAC. DA 11-262). February 15, 2011.

[11] Letter from Craig Davis, Vice President, Rural Health Care Division, USAC, to Sharon Gillett, Chief, Wireline Competition Bureau, FCC. "Re: Rural Health Care Pilot Program, Docket No. 02-60. USAC Observations on the FCC Rural Health Care Pilot Program." March 14, 2012.

funding under the Primary Program. All indications, on the contrary, lead to the conclusion that the Pilot Program was a trial program, indented to develop lessons to be gleaned prior to making recommendations, if any, for revising the Primary Program.

The Bureau notes in this PN that the 2010 NPRM sought comment on "how to transition Pilot Program participants to the ongoing rural health care support mechanism."[12] Specifically, the NPRM *sought comment* on "whether Pilot Program participants whose original request for competitive bids included both non-recurring and recurring costs should be permitted to transition to the health broadband services program without undergoing a new competitive bidding process."[13] (Emphasis added.) First, MTA notes that the Commission sought comment on this proposal. It has not resolved the matter. MTA recommends that the Commission comprehensively resolve the many issues raised in the NPRM and process the lessons learned from the Pilot Program before it adopts "bridge funding" or a transition mechanism to bring pilot projects into the permanent funding mechanism, *especially if such bridge funding or transition mechanisms involve the perpetuation of projects whose funding is not justified in the absence of any performance measurements or other due-diligence scrutiny*. Second, the paragraph in the NPRM to which the Bureau refers references only the proposed health broadband services program, and not the proposed infrastructure program. In other words, there is no reference in the record to justify transitioning any infrastructure pilot projects into the ongoing Rural Health Care support mechanism.[14]

The PN asserts that the *2006 Pilot Program Order* "recognized…that circumstances may necessitate additional funding for Pilot Program participants."[15] In a footnote, the PN refers to yet another footnote in the *2006 Order*. The *2006 Order* states,

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[12] *Op cit*. (PN, ¶5.)
[13] *Op cit*. (NPRM, ¶113.)
[14] MTA's comments on the NPRM listed a number of reasons that the infrastructure program should not be adopted as part of the Rural Health Care Primary Program.
[15] *Op cit*. (PN, ¶5.)

> Because we recognize that we will need the experience of more than one year to fully evaluate the results of the pilot program, the pilot program we establish herein is limited to two years (fn18).[16]

Footnote 18, on the other hand, contradicts the Order. It states

> Although this pilot program is limited to two years, we will continue to fund those applicants already accepted into the program, upon request, and subject to the availability of funds.[17]

In effect, the Bureau is seeking comment on whether continued funding of pilot projects or transitioning pilot projects to the permanent rural Health Care mechanism is justified on the basis of a footnote, which appears to contradict the letter and intent of the Pilot Program. MTA asserts that rulemaking by footnote is an inappropriate means by which to implement public policy, especially when such policy materially changes the nature of the underlying rules.

The PN also seeks comment on "providing funds only to those participants that will have exhausted all Pilot Program funding allocated to them before or during funding year 2012."[18] As MTA noted in comments filed in February, 2011, the selective new funding of only certain projects discriminates in favor of those projects that have exhausted their funding, and against such other projects that have not exhausted their funding. On what basis can the Commission justify such a discriminatory preference, especially in the absence of clearly established performance evaluation standards or other rules established through public rulemaking?

The PN proposes to transform the Pilot Program into a perpetual funding program before it has properly evaluated the Pilot Program and resolved the many issues raised in the NPRM. It is premature at best to extend funding for only certain pilot projects before comprehensive resolution of these matters. As noted above, the Commission recognizes that pilot projects needed to be self-sustaining once established.[19] Continued funding of pilot projects, especially in

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[16] *Op cit*. (*2006 Order*, ¶13.)
[17] *Id*. fn.18.
[18] *Op Cit*. (PN, ¶6.)
[19] MTA argues that Rural Health Care-funded infrastructure pilot projects may not sell "excess capacity" as a means of self-sustainability. The Telecommunications Act does

the case of any projects that used Pilot Program funding to construct infrastructure, would only perpetuate a policy that was ill-advised in the first instance. As the Bureau's PN states, rural health care providers wish to obtain additional funding may seek support from the Primary Program under the rural health care telecommunications program or the rural health care Internet access program.[20]

III. Conclusion

The Rural Health Care Pilot Program has provided valuable insight into policies that can promote—or discourage—the deployment of broadband telecommunications facilities to improve the delivery of health care service to rural Americans. Before extending funding to certain Pilot Program projects or transitioning pilot projects to the Primary Program on a piecemeal basis, the Commission first needs to apply lessons learned from the Pilot Program, and establish appropriate policies based on GAO's findings and the issues raised and comments received in the NPRM.

Respectfully Submitted,

/s/

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not authorize construction of infrastructure under the Rural Health Care Program. Moreover, telecommunications services provided under the Rural Health Care Program "may not be sold, resold, or otherwise transferred by such user in consideration for money or any other thing of value." 47 U.S.C. § 254(h)(3).

[20] *Op cit*. (PN, ¶4.)